

### **REMARKS/ARGUMENTS**

Claims 1-20 are pending in the application. Claim 1 has been amended. Claims 2-20 depend from claim 1. Claims 21 – 31 have been added.

#### **Claim Objection**

Claim 1 stands objected to as not forming a complete sentence. Claim 1 has been amended to include a period at the end of the claim. This amendment is believed to obviate the basis for the objection to claim 1 and Applicant therefore respectfully requests withdrawal of same.

#### **The § 103 Rejection over Boushy et al and Bentz**

Claims 1 and 2 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Boushy et al. (U.S. Patent No. 5,761,647) in view of Bentz. Claim 1 has been amended for the reason set forth above. Claim 2 depends from claim 1. In view of the following remarks and for at least the following reasons, Applicant respectfully requests reconsideration and withdrawal of this rejection.

The Examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. *MPEP* §2142. To establish a prima facie case of obviousness, three criteria must be met. First, there must be some suggestion or motivation, to modify the references or to combine reference teachings. Second, there must be reasonable expectation of success. Finally, the prior art must teach all the claim limitations. *MPEP* §2142. The teaching or suggestion to make the claim combination and the reasonable expectation of success must both be found in the prior art, and not based on applicants' disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

As the CAFC noted in Crown Operations International, Ltd., et al v. Solutia, Inc., 289 F.3d 1367, “Determination of obviousness cannot be based on the hindsight combination of components selectively culled from the prior art to fit the parameters of the patented invention.” In this case neither can such components be correctly used to refuse patentability. Applicant respectfully submits that a prima facie case of obviousness has not been established because Boushy et al., in view of Bentz, individually and in combination, fail to teach or suggest the claimed invention.

It is common knowledge that the wagering industry is quite lucrative and extremely profitable for gaming establishments such as casinos. To that end, any given casino is desirous of gaining players/patrons and extending/maximizing the amount of time a player spends wagering at a casino. It is well known in the art that casinos have dedicated considerable resources to the development and enhancement of player tracking systems (PTS) in an effort to extend player wagering. If the claimed invention were obvious as argued in the Office Action of March 9, 2006, it is highly probably that the claimed method would have already been invented by one of the aforementioned well funded casinos. Certainly, such gaming establishments and related suppliers had the funds and motivation to develop such a method but failed to do so. For at least this reason, Applicant respectfully submits that the claimed invention is NOT obvious in view of the cited references.

### **Claim 1**

Amended claim 1 provides a method of operating a gaming system, the gaming system comprising a player tracking system (PTS) having a PTS database capable of storing player profile fields therein, said player being tracked by said PTS being either a sponsoring player or a recruited player, said method comprising:

creating at least one additional field for each player profile to store information identifying a recruited player's sponsoring player;  
receiving information relating to the recruited player for the purpose of populating the recruited player profile and wherein said received information includes **information identifying a sponsoring player**;  
establishing recruited player criteria;  
accepting a recruited player into the PTS that meets the recruited player criteria;  
populating and storing a player profile in said PTS database corresponding to said received information from said recruited player;  
recording each player's gaming activity collected by said PTS database in each player's profile; and  
offering ongoing, typically complimentary, benefits to the recruited player's sponsoring player based on the gaming activity of said recruited player.

An advantage of the method of claim 1 is that it enables members of a player tracking system to be rewarded for the gaming activity of their direct and indirect recruits. As a result of providing these rewards, the method of claim 1 promotes customer loyalty, a larger customer base, and more gaming activity.

### **The Boushy Reference**

The Boushy reference discloses a player tracking system ("PTS") including "[a] system and method for implementing a customer tracking and recognition program that encompasses customers' gaming and non-gaming activity alike at a plurality of affiliated casino properties." [See Boushy abstract]. The Boushy reference discloses a system whereby players who opt to become members of casino/establishment's 'PARTNERSHIP' system, "are awarded points, based on their tracked activity at all affiliated casino properties." [Id.]

While Boushy discloses a player tracking system, Boushy does not teach, disclose or suggest establishing a link between player records. Page 3 of the Office Action correctly notes,

“... Boushy’s teachings are directed specifically towards the operation of a casino management system and **does not incorporate** teachings of the techniques found with regard to marketing and advertising programs that are **offered to a player.**”

Moreover, page 3 of the Office Action also states “... Boushy is silent with regard to the implementation of a **differentiation with a sponsoring player or a recruited player and creating associations between players** identifying the recruited player and sponsored player relationships.” In view of the fact that Boushy does not disclose, teach or suggest differentiation with a sponsoring player or a recruited player there is no reason to create an association between players. Thus, Boushy does not disclose, teach, or suggest the steps of “creating at least one additional field for each player profile to store information identifying a recruited player's sponsoring player” or “receiving information relating to the recruited player for the purpose of populating the recruited player profile and wherein said received information includes information identifying a sponsoring player” recited by claim 1.

### **The Bentz Reference**

The Bentz article describes an online affiliate program where a commission is paid to an affiliate based on profits of product sales. According to the Bentz reference, a successful affiliate program “has to be a win-win for all: the **business owner**, the **affiliate** and the **customer.**” [emphasis added]. In the traditional affiliate program, the affiliate is rewarded with a **sales commission** based on **profits** realized by the **business owner** from **product sales**. The Bentz reference describes an affiliate program as entailing ongoing marketing and sales efforts on the part of the affiliate and suggests that it is in the business owner’s interest to properly equip the affiliate with marketing tools for use in the affiliate’s ongoing efforts:

Equipping your affiliates with **marketing** tools is vital for your success. Customarily sending a monthly email about the best links

and special offers is a good beginning, too. Fuel your affiliates with promotional ideas to use their marketing tools smarter.

The Bentz reference also discloses a multi-tiered affiliate approach which rewards the original (sponsor) affiliate with a portion of **commissions** based on the **profits** from **product sales** attributed to ongoing sales and marketing efforts of any affiliate that is recruited by the original affiliate in addition to the original affiliate's own commission. According to Bentz, "[a] tiered payment structure, for the affiliate means that he/she is **always getting paid for their hard work**. (Why shouldn't an affiliate be entitled to the commission of an affiliate that they recruited?)"

It is important to note that the claimed method recites the words "**player**" and "**gaming activity**." Gaming and a player's "gaming activity" are not product sales, nor are they analogous to product sales. The claimed method does not recite any step involving **sales**. Furthermore, the claims do not recite any step involving a **commission** based on **profit** from **product sales**. Claim 1 recites:

recording each player's **gaming activity** collected by said PTS database in each player's profile; and  
offering ongoing, typically complimentary, benefits to the recruited player's sponsoring player based on the **gaming activity** of said recruited player.

Accordingly, the product sales and commissions of the tiered affiliate network of the Bentz reference are not analogous to, nor does the reference disclose, teach, or suggest the "player" and "gaming activity" recited in the steps of claim 1.

While Bentz discloses association of two affiliate accounts (recruited affiliate with original sponsoring affiliate), the association of affiliate accounts in a tiered affiliate network is not analogous, nor does it disclose, teach, or suggest associating a sponsor player with a recruited player. Thus, association of two affiliate accounts does not disclose the recited steps of "creating

at least one additional field for each player profile to store information identifying a recruited player's sponsoring player;" and "receiving information relating to the recruited player for the purpose of populating the recruited player profile and wherein said received information includes information identifying a sponsoring player;" as recited by claim 1.

Unlike the method of claim 1, the very nature of an affiliate program requires **ongoing effort** on the part of the affiliate in order to continue receiving a **commission** based on profit from **product sales**. According to the method of claim 1, once a player has been recruited, for example, the wagering establishment/casino performs the step of "offering ongoing, typically complimentary, **benefits to the recruited player's sponsoring player based on the gaming activity of said recruited player.**" Simply put, unlike sales commissions based on profits from product sales disclosed in the Bentz reference, according to claim 1 the sponsoring player does not have to do anything (on an ongoing basis or otherwise) to get benefits from the host casino based on the gaming activities of the recruited player.

Thus, the multi-tiered affiliate network of the Bentz reference **is not** analogous, nor does it disclose, teach, or suggest the method of claim 1. The multi-tiered affiliate program of the Bentz reference does not feature any participants (business owner, customer, sponsor affiliate, recruited affiliate) that are analogous to the "sponsoring player or a recruited player" as recited in the preamble of claim 1. Additionally, the **commission** based on **profits from product sales** that are attributed to ongoing efforts on the part of an affiliate are not the "ongoing, typically complimentary, benefits" recited in claim 1.

### **Combination of Boushy and Bentz References**

With respect, it is unclear to the Applicant how the teachings of the Boushy reference can be combined with the teachings of the Bentz reference. One skilled in the art would not have

any motivation to combine two or more references with incompatible teachings. Specifically the Office Action does not provide any basis or suggestion how one skilled in the art could combine the player tracking system of the Boushy reference with the multi-tiered affiliate network of the Bentz reference. Thus, one skilled in the art would not be motivated to attempt to combine the two cited references.

Assuming, arguendo, that the incompatible teachings of the cited references could be combined, the resulting combination does not disclose, teach, or suggest the method recited in claim 1. At best, the combination of the player tracking system of the Boushy reference and the sales commission from product sales from the multi-tiered affiliate network of the Bentz article produces a player tracking system that rewards players with a commission based on profit from product sales that are attributable to the marketing efforts of the player. Additionally, the combination would provide an original sponsor player with a commission based on profits from product sales that are attributable to ongoing marketing efforts of the recruited player.

In practice, according to the **fictitious combined** commission and PTS system, a player/affiliate would receive a commission based on the profit from sales of products (keepsakes, bath robes, etc.) from the casino gift shop where the sales are attributable to the ongoing efforts of the player. Additionally, the original (sponsoring) player would receive a commission based on the profits sales of products (keepsakes, bath robes, etc.) from the casino gift shop for sales that are attributed to the marketing efforts of the recruited player.

At best, the combination would still not disclose, teach, or suggest the following steps of claim 1:

creating at least one additional field for each player profile to store information identifying a recruited player's sponsoring player;

receiving information relating to the recruited player for the purpose of populating the recruited player profile and wherein said received information includes information identifying a sponsoring player;

offering ongoing, typically complimentary, benefits to the recruited player's sponsoring player based on the gaming activity of said recruited player

Therefore, combining Boushy with Bentz does not disclose, teach, or suggest all of the recited steps of claim 1. For at least the aforementioned reasons, Applicant respectfully requests withdrawal of the standing rejection to claims 1 and 2.

**The § 103 Rejection over Boushy et al., Bentz, in view of Messer et al.**

Claims 3 – 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Boushy et al in view of Bentz, further in view of Messer et al. (U.S. Patent Application Publication No. 20040111381). Claims 3 – 20 depend from amended independent claim 1 and are allowable over the combination of the cited references for at least the same reasons. In view of the following remarks, Applicant respectfully requests reconsideration and withdrawal of this rejection.

Applicant respectfully submits that a prima facie case of obviousness has not been established because Boushy et al., Bentz, in view of Messer et al, individually and in combination, fail to teach or suggest the claimed invention.

**Messer et al**

Messer describes a communications network that “tracks and manages Merchant and Affiliate promotional efforts in a seamless, integrated fashion.” According to Messer, “[o]perative characteristics include central control over new, Rich Media promotional links, allowing sophisticated promotions employing Java-based presentations or similar to be easily

applied across a broad network of connected Affiliate sites.” The Messer explains the operation of the affiliate tracking system as:

The system, at its more fundamental level, provides tracking and reporting capabilities for a confluence of participating Merchants and Affiliates. In this way, select promotions are deployed at Web Sites throughout the Internet, and link back, first through the Clearinghouse, and then to the Merchant sites to permit commerce on the **promoted products**, with **commissions** credited to the appropriate sourcing Web Site

In sum, the Messer reference discloses a computer software implemented system for monitoring and managing an online affiliate network with a mechanism to allocate **commissions** for **product sales** attributed to an affiliate referral.

#### **Combination of the Boushy, Bentz, and Messer References**

The affiliate tracking system of the Messer reference is largely cumulative in view of the Benz reference. It is not disputed that the teachings of the Messer reference are compatible with the system of the Bentz reference. The networked, software based system for tracking affiliate commissions described by Messer reference is clearly compatible with the multi-tiered affiliate program/operation described by Bentz. Nonetheless, just as stated above, it is unclear how (or why) the Bentz/Messer teachings could be combined by one of skill in the art with the teachings of the Boushy reference. One skilled in the art would not have any motivation to combine the incompatible teachings of the cited references. The Office Action does not provide any basis or suggestion how one skilled in the art could combine the player tracking system of the Boushy reference with the multi-tiered affiliate program of the Bentz reference and the affiliate commission allocation tracker system of Messer. Thus, one skilled in the art would not be motivated to attempt to combine the incompatible teachings of the above cited references.

Assuming, arguendo, that the incompatible teachings of the cited references could be combined, the resulting combination does not disclose, teach, or suggest the method recited in claim 1. Claims 3-20 depend from claim 1. At best, the combination of the player tracking system of the Boushy reference, the sales commission from product sales from the multi-tiered affiliate network of the Bentz article, and the system to allocate sales commissions from product sales to an affiliate described in the Messer reference produces a player tracking system that rewards players with a commission based on profit from product sales that are attributable to the marketing efforts of the player using a computer based system to allocate the sales commission to the appropriate player. Additionally, the combination would provide an original sponsor player with a commission based on profits from product sales that are attributable to ongoing marketing efforts of the recruited player using the aforementioned computer based system to properly allocate the commission.

According to the **fictitious combined** commission program, PTS system, and computerized commission allocation system, in operation, a player/affiliate would receive a commission based on the profit from sales of products (keepsakes, bath robes, etc.) from the casino gift shop where the sales are attributable to the ongoing efforts of the player using the computerized commission allocation system. Additionally, the original (sponsoring) player would receive a commission based on the profits sales of products (keepsakes, bath robes, etc.) from the casino gift shop for sales that are attributed to the marketing efforts of the recruited player using the computerized commission allocation system.

At best, the combination would still not disclose, teach, or suggest the following steps of claim 1:

creating at least one additional field for each player profile to store information identifying a recruited player's sponsoring player;

receiving information relating to the recruited player for the purpose of populating the recruited player profile and wherein said received information includes information identifying a sponsoring player;

offering ongoing, typically complimentary, benefits to the recruited player's sponsoring player based on the gaming activity of said recruited player

Therefore, combining Boushy, Bentz, and Messer does not disclose, teach, or suggest all of the recited steps of claim 1. Thus, by extension, the above mentioned combination does not disclose, teach, or suggest all of the recited steps of claims 3 - 20. For at least the aforementioned reasons, Applicant respectfully requests withdrawal of the standing rejection to claims 3 - 20.

### **New Claims 21-31**

New claim 21 provides computer readable storage medium having stored thereon a computer program for implementing a method of operating a gaming system, the gaming system comprising a player tracking system (PTS) having a PTS database capable of storing player profile fields therein, said player being tracked by said PTS being either a sponsoring player or a recruited player, said method comprising:

**creating at least one additional field for each player profile to store information identifying a recruited player's sponsoring player;**

**receiving information relating to the recruited player for the purpose of populating the recruited player profile and wherein said received information includes information identifying a sponsoring player;**

populating and storing a player profile in said PTS database corresponding to said received information from said recruited player;

recording each player's gaming activity collected by said PTS database in each player's profile; and

**offering ongoing, typically complimentary, benefits to the recruited player's sponsoring player based on the gaming activity of said recruited player.**

For the convenience of the Examiner, the claim steps appearing in bold font are absent from the references cited above, for at least the same reasons that are set forth above. Claims 22 – 31 depend from claim 21 and are allowable for at least the same reasons.

### **Conclusion**

Applicant respectfully submits the claims are in condition for formal allowance which is courteously solicited. If any issue regarding the allowability of any of the pending claims in the present application could be readily resolved, or if other action could be taken to further advance this application such as an Examiner's amendment, or if the Examiner should have any questions regarding the present amendment, it is respectfully requested that the Examiner please telephone Applicant's undersigned attorney in this regard. The Examiner's attention is also drawn to the proper correspondence address shown below. Should any fees be necessitated by this response, the Commissioner is hereby authorized to deduct such fees from Deposit Account No. 11-0160.

Respectfully submitted,

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